

UNITED STATE DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

UNITED STATES

V

ANTHONY BUCCI

No. 04-cr-10194-RCL

**VERIFIED MOTION OF PAUL A. DeCOLOGERO FOR RELEASE
OF JON MINOTTI'S LIMITED DEA-6 STATEMENTS RELATED TO THE
GOVERNMENT'S PATTERN OF CONCEALMENT OF EXCULPATORY
EVIDENCE AUSA'S McNEIL AND MERRITT PARTICIPATED IN WITH
ATF AGENT MERCER AND AUSA'S IN UNITED STATES V. DeCOLOGERO**

Now comes the wrongfully convicted defendant, Paul A.

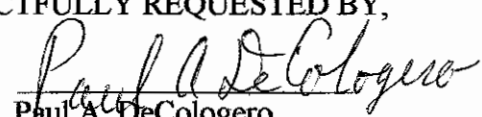
DeCologero, and, pursuant to Hon. Judge Rya Zobel's suggestion to ask Judge Lindsay to release Jon Minotti's statements (which conflict burdened former Attorney Jon Salsberg refused to move this Court for during the past ten days), without regard to the lack of credibility of Jon Minotti's stories (which still are material and exculpatory and were concealed by the prosecution team including AUSA's McNeil and Merritt), moves

Honorable Judge Reginald C. Lindsay to release:

- 1) Jon Minotti's (albeit possibly contrived) interview statement naming Anthony Bucci as telling Minotti he was the person who provided a bunch of guns to (WITSEC cooperator) Steven DiCenso which were subsequently seized by ATF Agent John Mercer (only the page listing that and "ATF Murder Investigation);
- 2) First page of the above listed DEA-6 report which named Atty Michael Schneider (Salsberg & Schneider) as being present during, or setting up, that DEA interview ;
- 3) Any other excerpt pages of Jon Minotti's statements which mention Aislin Silva, including but not limited to a subsequent DEA-6 report naming Anthony DeCologero (not Paul A.) as being the person responsible and clarifying the guns mentioned in the first report were linked to the Aislin Silva investigation and her apartment, not as formerly limited to Dicenso's apartment;
- 4) Any DEA 6's first page in the above-numbered case naming ATF Agent John Mercer on the cover page (otherwise redactable) because the record before Judge Zobel shows multiple denials by AUSA's and Mercer with DEA involvement.

As verification the attached sworn affidavit of William Mahoney concerning Jon Minotti's involvement as a suspected perpetrator in one of the Hobbs Act robberies in the DeCologero case, multiple filings (the undersigned avers were all handed to Judge Zobel's clerk but some undocketed ones are being located for docketing), are submitted to show AUSA's Feeley, DiNisco and Bator in the DeCologero case were aided by AUSA's McNeil and Merritt in this case, concealing the highly exculpatory DEA 6 reports by using the ruse of having Judge Lindsay order they not be disseminated, until ethical Attorney Michael Natola properly presented the general nature of the reports to Judge Zobel and all counsel when Anthony Bucci was called as a defense witness but his testimony could not be presented due to this Court's orders, thereby resulting in per se reversible error described in the other attached motions. In addition, out of appreciation for Attorney Natola having the courage to expose a pattern of government misconduct in my case (see sidebar transcript being prepared) and because death penalty negotiation details of cooperator Dicenso were concealed from Derek Capozzi and denial of subpoenaed records of lawyers is now expected to reverse his conviction, attached hereto are copies of the usual WITSEC lawyer subpoena's that produce all notes (see affidavit of Attorney Robinson agreeing to respond to subpoena) for in camera review, and appellate record sealing [for which AUSA subpoenas are also necessary to avoid motions to quash by way of AUSA's violating Brady duty under United States V. Sudikoff, 36 F. Supp 1196 (CD Cal 1999) as presented in attached Attorney Gormley motion to quash], hopefully preventing reversible error in this case.

March 24, 2006, copies served on
AUSA's McNeil & Merriit, and
Defense Attys Natola and Dreschler

RESPECTFULLY REQUESTED BY,

Paul A. DeCologero

DE#1787

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

Exhibit

USA v Bucci

04-CA-10194-RCL

UNITED STATES)

V.)

PAUL A. DeCOLOGERO)

No. 01-cr-10373-RWZ

**AFFIDAVIT OF WILLIAM MAHONEY IN SUPPORT OF
THE DEFENDANT'S MOTIONS RAISING CONFLICTS
OF INTEREST RELATED TO JON MINOTTI AND
NON-DISCLOSURE OF EXCULPATORY EVIDENCE**

I, William Mahoney, hereby depose and state of my own personal knowledge,
under pain and penalty of perjury, that:

- 1) I am a lifelong resident of Stoneham Massachusetts with the exception
of approximately September 2002 thru March 2003 when Jon Minotti
paid for my house in Fullerton California rented from Ange Realty, and
paid for its furnishings.
- 2) In December 20, 2002 I was arrested with \$175,000.00 of Minotti's money
and three ounces of high quality marijuana. On October 19, 2003 I was arrested
with 322 pounds of Minotti's marijuana in LaSelle County Illinois
- 3) I have known Steven DiCenso for approximately seventeen years
since junior high school.
- 4) I have known Jon Minotti for approximately fifteen years
since high school.

- 5) During the approximate 1995-1996 time period I observed Jon Minotti and Steven DiCenso together on many occasions.
- 6) Jon Minotti hooked DiCenso up with marijuana (approximately 50 pound loads) and because DiCenso used to hang around Paul McCarthy's apartment a lot I observed them there several times.
- 7) I was interviewed by Paul A. DeCologero's investigator and his lawyer John Salberg at the Salsberg & Schneider Office. Attorney Salsberg appeared to be reluctant to interview me and during that interview on a list of subjects concerned Jon Minotti asking me to help him rob a drug dealer in 1996 he referred to as Slim Stevens with Steven DiCenso and Thomas Regan (both of whom I had seen at Paul McCarthy's house in Stoneham). Investigator Gretchen Bennett was present when I told these facts to Attorney Salsberg, and she can verify the fact that did not ask me any questions on this matter and did not prepare me to testify about this. Subsequently, Jon Minotti told me that I had missed out on a good deal because they had gotten two shopping bags of drugs and money from Stevens. Minotti also told me that it was easy, the bags were right on the floor of a closet This was one of four areas Minotti discussed with me concerning rip offs in 1992, 1995, 1996 and 2002 when he repeatedly asked me to do rip offs. Minotti told me that he had guns and that we could use them for robberies. The 1992 incident involved Minotti threatening to beat someone up because that person had told the drug dealer he had robbed where Minotti was. In 2002 Minotti

also asked me to help him rip off Bill Gauthier. The 1996 matter should be in both the investigator's notes and a list in Attorney Salsberg's files [my memory seems to associate the 1996 incident with #10 on the list] but I do not specifically recall going into the pattern of 1992, 1995 and 2002 matters during that pre-trial interview and paragraph seven of my affidavit is just a rough approximation of facts which I am available to expand on at any retrial or evidentiary hearing in United States V. DeCologero, et. al., 01-10373-RWZ.

- 8) I have an excellent memory and I may have more information which I can provide to any lawyer in this case who wants to fully interview me.

March 11, 2006


William Mahoney

DE# 1784

Exhibit

UNITED STATE DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

USA v Bucc

04-cr-10194-Rd

UNITED STATES

V

PAUL A. DeCOLOGERO

No. 01-cr-10373-RWZ

(HEARING REQUESTED)

**MOTION FOR AUTOMATIC DISQUALIFICATION OF ATTORNEYS
JOHN SALSBERG, SUSAN CHURCH AND SALSBERG & SCHNEIDER
LAW FIRM BASED ON MULTIPLE CONFLICTS OF INTEREST
AND THE DEFENDANT'S TIMELY NOTICE OF PAUL A. DeCOLOGERO
NOW BEING REQUIRED TO DO CLOSING ARGUMENT BY HIMSELF**

Now comes the defendant, Paul A. DeCologero, in the above-entitled matter, and moves this Court, Honorable Rya Zobel, to automatically disqualify Attorneys John Salsberg, Susan Church and the law firm of Salsberg & Schneider, based on multiple conflicts of interest, with the defendant giving timely notice that Paul A. DeCologero is now required to do closing arguments by himself because he is the only person having knowledge of the defenses and trial proceedings.

In support of this motion and the required finding of Multiple conflicts of interest, the defendant notes his prior filings on the first day of empanelment with a copy of DeCologero V. Salsberg, 2006-101-F (legal malpractice and breach of professional contract conflict of interest based January 9, 2006 filing fee waiver approved January 11, 2006 verified complaint for monetary damages) supporting his substitution of counsel motion, the March 8, 2006 affidavit of Paul A. DeCologero and the affidavit of William Mahoney filed herewith. United States V. Tracy, 81 F3d 147,

149 (1st Cir 1996)(“Courts have recognized that a conflict of interest may result when pursuit of a client's interest would lead to evidence of attorney malpractice. United States V. Ellison, 798 F2d 1102, 1106-1108 (7th Cir 1986) cert. denied, 479 U.S. 1038 (1987)(defendant had accused attorney of malpractice); Mathis V. Hood, 937 F2d 790, 795 (2nd Cir 1991)(defendant had filed grievance with disciplinary committee). A showing of an actual conflict of interest obviates the need to demonstrate prejudice and constitutes a per se violation of the Sixth Amendment.”).

The facts which have been before this Court for more than two months, as recently supplemented with the Jon Minotti DEA 6 report conflict and affidavit of William Manohey certainly show that the defendant has met the standards set forth in Mickens V. Taylor, 535 U.S. 162, 172 n.5 (2002) with respect to the “conflict of interest” resulting from the Salsberg & Schneider Law Firm having “a division of loyalties that affected counsel’s performance”, Glasser V. United States, 315 U.S. 60, 75 (1942). The combination of John Salsberg and his investigator not interviewing Minotti, and not seeking Minotti’s DEA 6 statements concerning Anthony Bucci owning the guns given to DiCenso to store at Aislin Silva’s apartment (creating the same motive for Bucci) or related to David DeCologero’s father Anthony DeCologero (not Paul A.) being involved, and not presenting the testimony of William Mahoney related to cooperating Salsberg & Schneider client witness Jon Minotti’s Hobbs act robbery of Slim Stevens with Dicenso and Thomas Regan (which had potential adverse consequence for Minotti), prove adverse affect on defendant Paul A. DeCologero’s defense. Contrast Reyes-Vejerano V. United States, 276 F3d 94, 100 (1st Cir 2001)(“For example, one client may

stand to gain through negotiations with prosecutors that will injure another, raising concerns of loyalty; or information obtained in the representation of one client may be potentially useful to another, raising concerns of confidentiality -- **particularly if the first client is a possible witness at the second client's trial.**") with Brien V. United States, 695 F2d 10, 15 (1st Cir 1982)("In order to establish an actual conflict of interest, the petitioner ordinarily must prove two elements. First, he must demonstrate that some plausible alternative defense strategy or tactic might have been pursued. Foxworth V. Wainwright, 516 F2d 1072, 1079 (5th Cir 1975). He need not show that the defense would necessarily have been successful if it had been used, but merely that it possessed sufficient substance to be a viable alternative. *Id.* Second, he must establish that the alternative defense was inherently in conflict with the attorney's other loyalties or interests")). The case at bar has demonstrable prejudice, unlike United States V. Familia, 30 F3d 127 (1st Cir 1994)("Familia also offers no sound reasons to believe that Bonifacio (who was paying counsel) would have confessed to being the true owner of the cocaine" in relation to the defendant's claim concerning defense counsel "failing to file a motion to compel a confidential informant, who participated in three drug buys before Familia's arrest and provided the Providence police with information which lead them to suspect that persons occupying Familia's apartment were selling cocaine, to testify and identify the real drug pushers (i.e., Bonifacio and Kris)"), because Jon Minotto was and is the other suspect in at least one of the Hobbs Act robberies and Attorney Salsberg's Law Firm conflict prevented him from presenting Minotii's testimony concerning Anthony Bucci being the owner of the bunch of guns seized from Aislin Silva, and

both Minotti's admissions to Mahoney and Bucci's admissions to Minotti were admissible evidence had Attorney Salsberg not had a genuine conflict, Sanders V. Ratelle, 21 F3d 1446, 1452-1456 (9th Cir 1994)(other suspect conflict); Avila V. Galaza, 297 F3d 911, 915-924 (9th Cir 2002)(other suspect conflict); Perillo V. Johnson, 205 F3d 775, 801 (5th Cir 2000)("Actual conflict may exist and the Constitution is implicated when an Attorney places himself or herself in a situation inherently conductive of divided loyalties"); Rubin V. Gee, 292 F3d 396, 405 (4th Cir 2002)("Adverse effect can be shown from an Attorney's failure to take actions that are clearly suggested from the circumstances"). When the failure to interview and call Vincent Marino and other defense witnesses (see subpoena exhibits attached to the March 8, 2006 DeCologero affidavit and objections to Jon Minotti not testifying) are added to the conflict of interest from DeCologero V. Salsberg legal malpractice, United States V. Ellison, 798 F2d 1102, 1106-1108 (7th Cir 1986) cert. denied, 479 U.S. 1038 (1987)(defendant had accused attorney of malpractice); Mathis V. Hood, 937 F2d 790, 795 (2nd Cir 1991), this Court has an affirmative duty to automatically disqualify the Law Firm of Salsberg & Schneider and obtain the exculpatory fifteen page DEA 6 report and other Statements of Jon Minotti from the government on the morning of March 13, 2006, allowing Paul A. DeCologero to present his own closing arguments and then assigning CJA counsel to prepare the motion for mistrial and for a new trial during the expected extended jury deliberations this week.

RESPECTFULLY SUBMITTED,

March 13, 2006 8:00 a.m.

Copy served on AUSA's in hand and Board of Overseers and CJA Administrator Charles Rankin

Paul A. DeCologero pro se

UNITED STATE DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

Exhibit
USA v Buccer

04-cr-10194-RCL

UNITED STATES)

V)

PAUL A. DeCOLOGERO)

No. 01-cr-10373-RWZ

**DEFENDANT DeCOLOGERO'S OBJECTIONS TO JUDGE ZOBEL'S
CLEARLY ERRONEOUS AND FACTUALLY UNSUPPORTED DENIAL
OF MATERIAL WITNESS JON MINOTTI AND OTHERS, WITH MOTION
REQUEST TO OBTAIN, REVIEW IN CAMERA AND SEAL IN THE FIRST
CIRCUIT RECORD ALL INTERVIEW STATEMENTS OF MINOTTI THAT
CONCERN GUNS, AISLIN SILVA AND THE STONEHAM OVERDOSES**

Because of the United States V. Jon Minotti, 04-cr-

10325-GAO "actual conflict of interest" "with the interests of another of (the Salsbeg & Schneider) firm's clients" [docket entry #41 Michael Schneider Motion To Withdraw] that "counsel has conferred with both the defendant (Minotti) and the prosecuting Attorney John McNeil and believes that his withdrawal is in the interest of his client (Jon Minotti) and is or will at some point be required by the Mass. Rules of Professional Conduct", id, which precluded defense Attorney John Salsberg from acting with loyalty only to defendant Paul A. DeCologero throughout the trial, and which "Counsel is prepared to reveal the particulars of his concerns to the Court, either ex parte or in the presence of the prosecuting Attorney [DE #41 paragraph 5], not having the undivided loyalties of any assigned CJA Attorney, now comes Paul A. DeCologero and states his objections to Judge Zobel's March 9, 2006 clearly erroneous and factually unsupported denial (misstatement in open Court that Minotti had no admissible testimony) of

material defense witness Jon Minotti and all other proposed defense witnesses. Because the testimony of William Mahoney which conflict burdened Attorney Salsberg could not elicit concerning Jon Minotti's drug dealing partnership with Steven DiCenso and close relationship to, as well as personal knowledge of the details of, at least one of the dead persons found with Dicenso, defendant DeCologero also moves Hon. Judge Zobel to obtain, then review **in camera**, and seal in the appellate First Circuit Court of Appeals record, all of the ATF and DEA, or other AUSA debriefing and proffer statements of Jon Minotti concerning the bunch of guns Anthony Bucci admitted he gave DiCenso which were seized by the police (inferably in DiCenso's girlfriend's apartment), concerning Aislin Silva (**who Minotti named the killers of in his DEA statement in relation to the ATF murder investigation**) and concerning the Stoneham overdoses, United States V. Acevedo-Ramos, 755 F2d 203, 209 (1st Cir 1985)("independent, though in camera, review of the underlying evidence at defendant's request offers the defendant greater protection than no independent check at all. Cf. Fed.R.Crim.P. 16(d)(1)"); United States V. Conley, 249 F3d 38, 43 (1st Cir 2001) ("After oral argument on Conley's motion for a new trial, the district court ordered the government to produce, in camera, all of the IAD files in its possession related to this case"); United States V. Martorano, 663 F2d 1113, 1115 (1st Cir 1981)("The prosecutor in charge of this case had a positive duty to review the files himself or have them checked by someone thoroughly familiar with the case. Nor do we think that Agurs is avoided because the Detroit grand jury testimony of Ciulla was turned over to the court during the trial for an in camera inspection. The Brady motions were made prior to trial and the judge should have been apprised of the existence

of the testimony before trial so he could have examined it, if he wished. Although it probably made no difference in this case, **there may be cases in which a pretrial in camera inspection of alleged Brady material would expedite matters considerably**"); United States V. Brillmyer, 57 F3d 31,33 (1st Cir 1995)("The district court found that Josleyn had made the threshold showing required under United States V. LaRouche Campagne, 841 F2d 1176 (1st Cir 1988), to warrant in camera review of the documents in the Cameron file"). Here, defendant Paul A. DeCologero, has met his burden for the in camera review of Minotti's statements because they contain several conversations with other suspected perpetrator Anthony Bucci containing admissions against Bucci's penal interests, and Minotti's long term drug dealing partnership or association with Steven DiCenso, United States V. Nixon, 418 U.S. 683, 700 (1973); United States V. LaRouche Campagne, 841 F2d 1176, 1179 (1st Cir 1988)("Reviewing the record before it, the Nixon Court concluded that although the contents of the tapes could not, at the stage of in camera review, be described fully by the Special Prosecutor, "there was a sufficient likelihood that each of the tapes contain[ed] **conversations relevant to the offenses charged in the indictment.**" 418 U.S. at 700, 94 S.Ct. at 3103 (emphasis added). It also concluded that there was a "sufficient preliminary showing that ... the subpoenaed tapes contain[ed] evidence admissible with respect to the offenses charged in the indictment." *Id.* (emphasis added). In the case before us, the following facts were before the court: (1) Fick was not only a scheduled prosecution witness but it was uncontroverted that he would be a key witness, indeed one of the two most crucial government witnesses; (2) **he had been professionally associated with several of the defendants** in their "security

and intelligence" work for most of the period charged in the indictment").

This Court was precluded as a matter of law from merely relying on conflict burdened Attorney Salsberg to make the Minotti offer of proof, not just because of his inability to offer his firm's client's inculpatory statements, but because Salsberg must be found to have rendered ineffective assistance for failing to even interview Minotti or investigate Minotti's connections to Steven DiCenso or the other suspected perpetrator Anthony Bucci source of Aislin Silva guns admissions against Bucci's penal interests which Salsberg had a duty to introduce for the defense, Avila V. Galaza, 297 F3d 911, 915-924 (9th Cir 2002)(Successor Attorney Yamamoto held ineffective because, "Despite Yamamoto's belief that Ernesto was the shooter, he **conducted no investigation to substantiate this belief and never instructed his investigator, Kazuo Sakamoto ("Sakamoto"), to seek out evidence implicating Ernesto**" which prior Attorney Denny was aware of because "shortly after the shooting, Ernesto met with Denny and Lynn and confessed that he, not Jesus, was the shooter. Attorney Denny withdrew from Jesus's case because he believed that Ernesto's confession created a conflict of interest"); Towns V. Smith, 395 F3d 251 (6th Cir 2005)(Counsel's conduct was objectively unreasonable because "counsel could not have evaluated or weighed the risks and benefits of calling (the un interviewed person) as a defense witness without so much as asking [him] what he would say if called. Prejudice was found because, if counsel had investigated, the (uncalled witness) would have testified that the defendant had nothing to do with the crimes); United States V. Moore, 554 F2d 1086, 1093 (DC Cir 1976)("Counsel's anticipation of what a potential witness would say does

not excuse the failure to find out”); US EX REL Hampton V. Leibach, 347 F3d 219, 252 (7th Cir 2003)(Defense “counsel cannot assess credibility and demeanor of a prospective witness without looking him in the eye and hearing him tell his story”); Anderson V. Johnson, 338 F3d 382, 385, 388-394(5th Cir 2003); Pavel V. Hollins, 261 F3d 210, 219-229 (2nd Cir 2001). Attorney Salsberg’s conflict extends to his investigator who he did not send to interview Jon Minotti and the conflict burdened limited request which was denied on March 9, 2006 was insufficient for proper evaluation of the potential materiality of Jon Minotti’s defense testimony. Only full **in camera** review of all of the ATF and DEA and AUSA’s copies of Jon Minotti’s statements concerning the Bucci source guns, Aislin Silva and the Stoneham overdoses with Minotti’s connections to Steven DiCenso can support a proper decision as to whether Jon Minotti should now be presented as a defense witness (noting that Paul A. DeCologero did not agree to resting the defense without Minotti’s testimony).

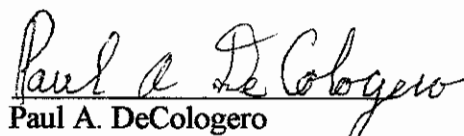
CONCLUSION

Paul A. DeCologero’s objections should result in this Court reconsidering its denial and reopening the defense for Jon Minotti and all other related defense witnesses to testify after this Court orders production of all of that material witness’ statements for its review and sealing in the First Circuit appellate record because the trial has turned into a farce and mockery of justice due to the patently unconstitutional restrictions on the defense and conflict burdened counsel amounting to no counsel at all. New CJA assigned counsel is necessary and the March 9, 2006 motion to dismiss or for a mistrial should also be granted. At the

necessary retrial of this case, the unduly restrictive and blanket restrictions on the defendant's testimony should not occur, Rock V. Arkansas, 483 U.S. 44 (1987)(and its' progeny);

RESPECTFULLY SUBMITTED,

March 10, 2006


Paul A. DeCologero
27 Back Bay Court
N. Reading, MA. 01887

Copy served on AUSA's in hand upon filing in court on 3/10/06

DEF# 1786

UNITED STATE DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

Exhibit
USA v Bucci

04-cr-10194-Rcl

UNITED STATES

V

PAUL A. DeCOLOGERO

No. 01-cr-10373-RWZ

(HEARING REQUESTED)

**DEFENDANT PAUL A. DeCOLOGERO'S VERIFIED OMNIBUS
MOTION FOR ASSIGNMENT OF CONFLICT FREE COUNSEL
TO INTERVIEW AND PRESENT TESTIMONY FROM MATERIAL
WITNESSES, OR TO COMPEL ATTORNEY SALSBERG AND
GRANT A SHORT CONTINUENCE AS WELL AS SANCTION THE
GOVERNMENT FOR ITS' PATTERN OF NON-DISCLOSURE, OR
TO DISMISS THE INDICTMENTS OR GRANT A MISTRIAL**

Now comes the defendant and moves this Honorable Court to assigned conflict free counsel, pursuant to the CJA act, for the purpose of interviewing Salsberg & Schneider law firm counsel's former clients Jon Minotti and Vincent Marino, with several witnesses related thereto (see subpoena copies attached to March 8, 2006 DeCologero affidavit and four more March 9, 2006 subpoena requests) with a hearing held forthwith on this motion, United States V. Eaton, 416 F2d 22, 23 (9th Cir 1969)(Evidentiary hearing required when counsel's loyalty or competence is called into question by his untimely failure to subpoena a defense witness), or to compel Attorney John Salsberg to interview both Marino and Minotti and file or make an oral offer of proof as to the relevance and materiality of their testimony, or for this Court to otherwise facilitate the defendant's Sixth Amendment Compulsory Process Clause rights Washington V. Texas, 388 U.S. 14, 16-23 (1967); United States V. Valezuela-Bernal, 458 U.S. 858, 867 (1982) because "the right to offer the testimony of witnesses, and to

compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies. Just as an accused has the right to confront the prosecution's witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law," Pettit v. Hall, 599 F2d 476, 480 (1st Cir 1979) and grant a short continuance for the these purposes because this is not a case like United States V. Tajaddini, 945 F2d 458, 465-466 (1st Cir 1991) where assigned counsel's failure to follow his clients directions in a timely manner to subpoena California witnesses was due to the defendant failing to sufficiently provide counsel with names, id. Also see United States V. Fountain, 768 F2d 790, 806-807 (7th Cir 1985).

For the first time, on March 8, 2006, the government's continuing pattern of non-disclosure and false denials n.1/, was exposed by United States V. Bucci, 04-cr-10194-RCL defense Attorney Michael Natola showing Judge Rya

-2-

n.1/ Attached hereto are the following July 22, 2004 transcript excerpt exhibits:

"MR. PAUL A. DeCOLOGERO: Is there any more ? Where is it ? Where is the exculpatory evidence, your Honor ? They keep on holding evidence back."
(page 22)

"THE COURT: And I am simply asking you whether the Government has, you know, what the level of comfort is on the part of Government counsel that there isn't something else out there ?

MR. FEELEY: Well, its as high as it can be, your Honor, without having a crystal ball and without knowing for sure. But the Government certainly knows of no possibility of reliable information inconsistent with its theory of the case here."
(page 26)

Zobel and all defense counsel in this case a concealed DEA 6 report which has on its' first page Attorney Michael Schneider's name, and on a subsequent page includes the words **(ATF murder investigation)** and the statement of a Salsberg and Schneider Law Firm client cooperating government informant: **"Minotti stated that Bucci had a bunch of guns that were stored at Steve DiCenso's house that were found by the police"** which is an obvious reference to the bunch of guns DiCenso's girlfriend Aislin Silva had seized by ATF Agent John Mercer (who shall be shown to have been part of Minotti debriefing or interview team and have had personal knowledge of Minotti naming Bucci as the other suspected perpetrator with a similar motive to kill Silva due to the loss of Bucci's guns). Defense witness William Mahoney will also need to be recalled to corroborate Jon Minotti and Steven DiCenso's drug dealing partnership and Jon Minotti's best friend dying in the Stoneham overdoses at a location Minotti often frequented and is expected to have vast exculpatory knowledge of circumstances and poison heroin sources. These facts were known or available to Attorney John Salsberg, but Salsberg chose not to explore his firm's client having an intimate relationship with main government witness DiCenso and reasonably foreseeable culpability. Protecting the penal interests of Salsberg & Schneider client Jon Minotti was and is in direct conflict with preparing and presenting the best available defense for their firm client Paul A. DeCologero, and such ongoing genuine conflict of interests is the only reason for defense counsel not interviewing and calling Minotti as a trial defense witness.

Attorney John Salsberg's refusal to help serve a subpoena
Of Jon Minotti on March 8, 2006 with a subpoena for the DEA 6 requires new CJA

counsel assignment forthwith, and strongly supports granting a mistrial.

The sanction of dismissal of the indictment or this Court granting a mistrial is warranted after an assigned CJA lawyer interviews Jon Minotti, prepares him to testify and presents him as a defense witness with copies of ATF Agent John Mercer's notes, all DEA interview reports, and Attorney Schneider's law office records concerning the DEA 6 report in question, his motion to withdraw due to the genuine conflict of interest with another firm client (i.e. Paul A. DeCologero). See supplemental memorandum on dismissal issue to be filed based on this most recent instance in the pattern of non-disclosure of exculpatory evidence and the late disclosure of the DEA 6 on March 8, 2006 causing prejudicial loss of defense witness Anthony Bucci's testimony, id. Testimony from AUSA's in this case, in Minotti's case and both ATF and DEA Agents is necessary to fully develop the record on this issue and for the jury on the outrageous government misconduct defense, United States V. Santana, 6 F3d 1, 12 (1st Cir 1993) ("the outrageous misconduct doctrine, no matter how cramped its confines, is not entirely mummified. Should the occasion and the necessity arise, we continue to believe that the law will prove itself adequate to the task of preventing the government from going too far. In the war on crime, as in conventional warfare, some tactics simply cannot be tolerated by a civilized society."); In Re: United States, 286 F2d 556, 562 n. 5 (1st Cir 1961) ("Conceivably, although we have no occasion to decide and do not decide, a judgment of acquittal might be warranted in the event that deliberate misconduct of Government counsel is so outrageous as not only to render the trial in progress unfair but also to make a fair trial in the future impossible.") and United

States V. Hastings, 847 F2d 920, 930 (1st Cir 1988)(Breyer,J. dissenting)(“Where governmental misconduct is serious, courts sometimes dismiss indictments even though the defendant fails to show the misconduct prejudiced him in particular. United States V. Ballivian, 819 F2d 266, 267 (11th Cir 1987)(observing that “a pattern of widespread and continuous misconduct” might warrant a dismissal of an indictment with prejudice for governmental misconduct even if defendant fails to show such misconduct seriously prejudiced him). Kyle V. United States, 297 F2d 507, 514 (2nd 1961)(Friendly,J). This Court may find prejudice resulting from such “other actions designed to give the prosecution an unfair advantage at trial,” United States V. Marshank, 777 F. Supp. 1507,1521(N.D. Cal 1991); United States V. Kojayan, 8 F3d 1315, (9th Cir 1993) (Remanding for the lower Court to consider dismissal of the indictment with prejudice as appropriate sanction for Assistant United States Attorneys’ false misrepresentations and the AUSA’s supervisors’ failure to take corrective action and own up for the misconduct) Contrast United States V. Batres-Santolino, 521 F. Supp 744 (N.D. Cal 1981)(DEA outrageous conduct) with United States V. Talbot, 51 F3d 183, (9th Cir 1994)(Lesser sanction of exclusion of witness testimony for government misconduct).

With respect to Salsberg & Schneider associate Attorney Ryan Schiff’s former client, Vincent Marino, new CJA counsel is also needed to interview this vital defense witness and present a proper full offer of proof (not just the limited offer conflict burdened Attorney Salsberg filed) adding the other suspected perpetrator aspects, the involvement of Robert Nogueira in the disappearance and death of Aislin Silva (recognizing Attorney Salsberg previously received other source data on

Ms. Silva being seen in the company of these individuals and giving Nogueira a bag of gloves from her place of employment, MVP Sports, which defense counsel refused to conduct any investigation into). Also see Boston Herald newspaper reporter's that Attorney Salsberg refused to subpoena as listed in attachments to March 8, 2006 DeCologero affidavit and note the other documents sought that the law firm of Salsberg and Schneider refused to subpoena create a huge issue for the First Circuit while combining the Minotti conflict of interests issue amounts to "structural error" and complete denial of counsel voiding the results of this trial.

Defendant Paul A. DeCologero also suggests the ongoing obstruction of transportation of Vincent Marino due to possible overtime hours or U.S. Marshall's service extra costs, is pennywise and pound foolish where, as here, the denial of the Compulsory process Clause right to present Marino's testimony most likely will result in a First Circuit retrial order if the government's fatally flawed case somehow results in convictions. A court abuses its discretion when it denies a subpoena request for a witness who would give relevant testimony, United States V. Sims, 637 F2d 625, 627-629 (9th Cir 1980). Accord, United States V. Cruz-Jiminez, 977 F2d 95, 102-105 n. 5(3rd Cir 1992)(lower court abused its discretion by refusing to issue writ of habeas corpus ad testificandum to the custodian of an incarcerated witness, where the witness' testimony may have been material which would have been a jury question, not up to the government and its theory of what the testimony may have been); United States V. Moudy, 462 F2d 698, 699 (5th Cir 1972)(fact that court knew relevance of testimony and available procedure to bring witness to court would not have delayed the


trial supported finding that lower court abused its' discretion). Because a court must grant a defendant his Compulsory Process Clause rights when the proffered testimony is relevant and material, Holden V. United States, 393 F2d 276, 278 (1st Cir 1968)("If the court is satisfied that the proposed testimony of the witness would be material to the case it **shall** vacate the judgment and verdict and grant a new trial"), this Court should order the U.S. Marshall's service to bring Vincent Marino to Massachusetts to testify on Friday March 10, 2006. n.2/

CONCLUSION

This Court should assign conflict free CJA counsel, or grant other relief stated herein, including but not limited to, facilitating defense witness testimony and dismissing the indictments or granting a mistrial

RESPECTFULLY SUBMITTED,

March 9, 2006


Paul A. DeCologero
27 Back Bay Court
N. Reading, MA. 01887

-7-

n.2/ It should also be noted that everyone in the Courtroom understood the proffer as to the witnesses who had not appeared on March 8, 2006 and this Court's denial of the request for bench warrants also amounted to prejudicial reversible error, United States V. Simpson, 992 F2d 1224, 1229-1230 (D.C. Cir 1993)

UNITED STATE DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

Exhibit

USA v Buaci

04-cr-10194-RCL

UNITED STATES)

V)

PAUL A. DeCOLOGERO)

No. 01-cr-10373-RWZ

**AFFIDAVIT OF PAUL A. DeCOLOGERO IN SUPPORT OF
RENEWED REQUEST FOR FAIR OPPORTUNITY TO PRESENT
A FULL DEFENSE AND FOR COMPULSORY PROCESS
OR MY ALTERNATIVE REQUESTS FOR A MISTRIAL OR TO
COMPEL ATTORNEY SALSBERG TO PRESENT FULL DEFENSE**

I, Paul A. DeCologero, hereby depose and state under pain and penalty of perjury, that:

- 1) I requested my Attorney, John Salsberg, to present the defense testimony of Vincent Marino in a proper and timely manner verbally on several occasions prior to trial, during the beginning of trial when the witness list was filed, and only when Attorney Salsberg failed to exercise my Sixth Amendment Compulsory Process Clause rights for the first month of trial did I give him a motion to file to bring Marino to Massachusetts which he edited and filed on February 28, 2006. This was followed by Judge Zobel allowing the motion in open court last week.
- 2) I also requested Attorney Salsberg to fully present my other suspected perpetrator defense in a timely manner prior to trial, during the beginning of trial when additional witnesses were given to him in a handwritten list during the first day of jury empanelment, and more recently I gave him a

set of document and witness subpoenas (copy attached hereto) which was consistent with my requests during meetings in his office during the summer of 2005, my verbal pretrial Compulsory Process requests, and my requests during jury empanelment. I now request the Court to have subpoenas served forthwith.

- 3) In addition, as early as last summer during our meetings in his office, I had made requests for investigation of Steven DeCenso's drug dealing partner and potential defense witness Jon Minotti, which were consistent with my first day of trial "Motion For Recusal Of Judge Zobel, Or In The Alternative, Motion For Fair Opportunity To Present A Full defense, With Double Jeopardy Appeal, Or Assignment Of Substitute Counsel" and its attached "Verified Complaint" exhibit affidavit averments.
- 4) I have not in any way been responsible for delays in the interviewing and calling of any proposed defense witnesses and I have not waived my Sixth Amendment Compulsory Process Clause rights with respect to Vincent Marino, Jon Minotti and the witnesses and documents listed in the attached subpoena copies, nor do I know whether Salsberg and Schneider's representation of Jon Minotti and their associate Attorney Ryan Schiff's prior representation of Vincent Marino when he was a client of the lawyer Ryan worked for, Robert Sheketoff, has played any part in John Salsberg's reluctance to subpoena documents and call witnesses for my defense in a more timely manner, but I would like this Court to allow me an opportunity to fully develop the record of prejudice I am suffering. I do not have any personal knowledge as to why Attorney Salsberg did not have Vincent